

1 Defendants seek to dismiss the following Defendants against
2 whom no claims for relief exist: Eric Burson, Anthony DiGiralmo,
3 James Figueroa, David Grusman, Vincent Hain, Michael Maxfield,
4 Jeffrey Patterson, Roy Plumlee, Lavert Taylor, Howard Skolnik, Leo
5 Vath, Paul Wheelock, and Gina Hain. Defendants argue that this
6 would leave only the Defendants who were actually involved in the
7 facts underlying Plaintiff's one remaining claim for violation of
8 his procedural due process right to notice.

9 The Court notes that the dismissal of defendants is not a
10 proper subject for a motion in limine but for a motion to dismiss.
11 Further, it is very late in the proceedings to seek to dismiss
12 defendants. However, Plaintiff has not responded to the motion and
13 therefore consents to its granting pursuant to Local Rule 7-2(d) and
14 the Court is satisfied that the relevant Defendants will remain in
15 the action. For this reason, Defendants' motion (#297) will be
16 granted and the Defendants delineated above dismissed from the
17 action. The remaining Defendants in this action are Tracy Dory,
18 Cheryl Burson, James Brill, Maryann Marsh, David Magnum, and Brian
19 Williams.

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21 **II. Plaintiff's Motion in Limine to Exclude Plaintiff's I File,**
22 **Sentence Structure Records, and NOTIS Records (#298)**

23 On May 11, 2011, Plaintiff filed a Motion in Limine (#298), in
24 which he objects to the admission of evidence pertaining to his "I
25 File," "Sentence Structure Records," and "NOTIS Records." On May
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1 27, 2011, Defendants opposed (#303) Plaintiff's Motion in Limine
2 (#298).

3 Plaintiff argues that evidence about his "sentence structure,"
4 that is, evidence showing that he is serving a sentence for life
5 without possibility of parole, is irrelevant and prejudicial.
6 Defendants respond that Plaintiff's sentence is relevant to the
7 issue of damages, because Plaintiff is seeking compensation for his
8 temporary loss of statutory "good time" credits. Defendants contend
9 that the temporary loss of the "good time" credits did not result in
10 any actual harm to Plaintiff, and therefore, Defendants should have
11 an opportunity to present evidence of Plaintiff's sentence. In the
12 event Plaintiff were to abandon this claim by notice no less than
13 five days prior to trial, then it appears that evidence of his
14 "sentence structure" would not be relevant and therefore
15 inadmissible. However, because Defendants have demonstrated the
16 relevancy of Plaintiff's sentence, Plaintiff's Motion (#298) with
17 respect to his "sentence structure records," will be denied on this
18 basis.

19 Plaintiff also argues that records of his previous disciplinary
20 history are vague, irrelevant, and unreliable. Plaintiff's Motion
21 (#298) to exclude such evidence is itself vague and premature. The
22 Court is unable to determine what evidence Defendants intend to
23 produce at trial, and what Plaintiff specifically objects to, based
24 on Plaintiff's Motion (#298). Rather than issuing a blanket ruling
25 at this time with respect to all records, as Plaintiff requests, the
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1 Court shall deny Plaintiff's Motion (#298) and address the issue
2 during trial if the need arises.

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4 **III. Defendants' Motion in Limine to Preclude Plaintiff From Seeking**
5 **Compensatory Damages or Damages for Emotional Suffering (#299)**

6 Defendants submitted their Motion in Limine (#299) on May 12,
7 2011. Plaintiff responded on June 3, 2011, and Defendants replied
8 (#309) on June 13, 2011.

9 Defendants have conceded liability in this action for depriving
10 Plaintiff of his due process right to receive twenty-four hours'
11 notice of disciplinary charges against him. The only issue for
12 trial is the amount of damages to which Plaintiff is entitled for
13 this deprivation. The amended complaint (#12) requests separate
14 damages for "willful and deliberate physical and emotional distress"
15 in addition to compensatory, nominal, and punitive damages.
16 Defendants do not attack Plaintiff's request for nominal and
17 punitive damages.

18 Plaintiff has not alleged or produced any evidence of having
19 suffered a physical injury as a result of the constitutional
20 deprivation at issue. Accordingly, Plaintiff cannot recover damages
21 for physical injury. Furthermore, the Prison Litigation Reform Act
22 ("PLRA") precludes an inmate from recovering monetary damages for
23 mental and/or emotional injuries absent a showing of physical
24 injuries. 42 U.S.C. § 1997e(e); see also Oliver v. Keller, 289 F.3d
25 623, 639 (9th Cir. 2002). For this reason, Plaintiff is barred from
26 seeking compensation for any emotional injury.

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1 Defendants argue that Plaintiff cannot seek compensation for
2 the approximately fifty dollars in lost wages or other losses of
3 privileges. Defendants conflate the issues of liberty interest and
4 provable injury. Defendants are correct in noting that Plaintiff
5 has no liberty interest in prison employment and other privileges
6 and therefore cannot bring a due process claim on the basis of these
7 deprivations. However, Defendants have presented no argument as to
8 why Plaintiff should be denied compensation for these injuries
9 visited upon him as a result of the deprivation of his
10 constitutional right to notice prior to his disciplinary proceeding.
11 Once a constitutional violation is found, a plaintiff must be
12 awarded compensatory damages in an amount appropriate to compensate
13 a plaintiff for any damages he sustained as a direct result of the
14 conduct of defendants. Smith v. Wade, 461 U.S. 30, 52 (1983).
15 Therefore, Defendants' motion (#299) will be granted as to damages
16 for physical and emotional injury only, and denied as to other forms
17 of compensatory damages.

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19 **IV. Defendants' Motion in Limine to Exclude Argument or Evidence**
20 **Concerning Plaintiff's Allegations That SDCC Officials Retaliated**
21 **Against Him and Lost His Property on or Around July 11, 2008 (#318)**

22 Defendants submitted the motion in limine (#318) on August 12,
23 2011. Plaintiff did not respond.

24 Defendants seek to preclude all argument or evidence regarding
25 allegations of retaliation because the amended complaint (#12) was
26 filed before the alleged retaliatory events took place and therefore

1 does not contain a claim for retaliation. Further, the Magistrate
2 Judge (#118) denied Plaintiff's motion for leave to amend the
3 complaint (#83) to include a claim for retaliation for which he
4 seeks \$5,000 in compensation for his confiscated personal property.
5 The Court again finds that the retaliation claims are unrelated to
6 the one surviving claim in this action for deprivation of the due
7 process right to notice of the disciplinary proceeding against
8 Plaintiff, and Plaintiff will not be allowed to argue or present
9 evidence in this regard. Further, Plaintiff has not responded to
10 Defendants' motion (#318) and therefore has consented to its
11 granting according to Local Rule 7-2(d). For the foregoing reasons,
12 Defendants' Motion in Limine (#318) must be granted.

13 14 V. Conclusion

15 IT IS, THEREFORE, HEREBY ORDERED that Defendants' Motion in
16 Limine to Dismiss Extraneous Defendants (#297) is GRANTED. The
17 following Defendants are DISMISSED from the action: Eric Burson,
18 Anthony DiGiralmo, James Figueroa, David Grusman, Vincent Hain,
19 Miachael Maxfield, Jeffrey Patterson, Roy Plumlee, Lavert Taylor,
20 Howard Skolnick, Leo Vath, Paul Wheelock, and Gina Hain.

21 IT IS FURTHER ORDERED that Plaintiff's Motion in Limine (#298)
22 is DENIED.

23 IT IS FURTHER ORDERED that Defendants' Motion in Limine to
24 Preclude Plaintiff from Seeking Compensatory Damages or Damages for
25 Emotional Suffering (#299) is GRANTED in part and DENIED in part.

1 Plaintiff will be precluded from seeking damages for emotional
2 suffering, but will be allowed to seek other compensatory damages.

3 **IT IS FURTHER ORDERED** that Defendants' Motion in Limine to
4 Exclude Argument or Evidence Concerning Plaintiff's Allegation That
5 SDCC Officials Retaliated Against Him and Lost His Property on or
6 Around July 11, 2008 (#318) is **GRANTED**.

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8 DATED: January 31, 2012.

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10 UNITED STATES DISTRICT JUDGE